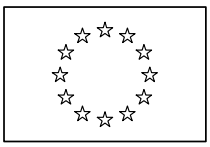

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REPORT FROM THE COMMISSION

ANNUAL REPORT FROM THE COMMISSION TO THE EUROPEAN PARLIAMENT ON THIRD COUNTRY ANTI-DUMPING, ANTI-SUBSIDY AND SAFEGUARD ACTION AGAINST THE COMMUNITY (2005)

[SEC(2006) 1804]

PART I

INTRODUCTION

The need to open third country markets and create new opportunities for trade has been identified as one of the key elements in Europe's trade policy. However, in order to ensure that European companies can benefit from such opportunities it is imperative that they are able to compete fairly in third country markets. Unfortunately, increasing exports are often the target of increasing trade defence actions by third countries and the European Union, as a major exporter worldwide, is frequently exposed to such actions. While it is recognised that third countries have the right to take trade defence measures where necessary, in accordance with WTO rules, all too often these actions do not conform to the required standards. In turn these actions become a serious and unjustified impediment to our legitimate market access opportunities. As a result, DG Trade considers the fair and proper implementation of WTO trade defence instruments by our trading partners as a priority and every effort is made to ensure that our exports are not unduly penalised. For this reason the European Commission monitors third country trade defence actions and helps companies and EU Member States to fully avail of their rights as interested parties in line with WTO rules.

In practical terms this involves channelling information, analysing complaints and findings, advising companies regarding the relevant laws and regulations and making representations to investigating authorities where necessary.

The role of the Commission is most important where cases are problematic either due to individual or systemic breach of the relevant WTO laws. To address such problems we use the diplomatic route, normally the quickest and the most efficient way to resolve these issues or failing that we resort to litigation in the WTO context. Both approaches have met with success including, for example, the removal of over 12 measures by India following consultations with them.

Our efforts to have third countries improve their standards are not solely focussed on individual cases. In the context of the Doha Round which, unfortunately at the time of writing, is suspended the EU tabled proposals to strengthen the rules and the disciplines governing the use of anti-dumping and countervailing measures which would, if adopted, make it more difficult for countries to abuse the system. These efforts to improve the overall standards by users of the instruments is further strengthened by negotiating the inclusion of specific obligations on the fair use of trade defence instruments in any bilateral trade agreement with third countries. Furthermore, the trade defence services of DG Trade also devote a great deal of time and resources to providing technical assistance to third countries on the use of the instruments in order to persuade them to apply the rules in a fair and balanced manner. The Community is well placed to advise on this given our own high standards in administering these instruments. This report sets out, in more detail, the specific cases we have followed, the various initiatives taken and details the successes we have had in our work during 2005. The report comprises of two sections, the first deals with the main trends of the year, while the second deals with specific countries or groups of countries, focusing on some of the most notable cases.

1. TRENDS

1.1. General Overview

The end of 2005 saw a welcome change from the trend of previous years with the number of **trade defence measures in place against Community** exporters decreasing. At the end of 2005 the number of measures in force against the Community was 151 compared to 185 at the end of 2004. There were 30 measures terminated during 2005 and 23 measures expired. Of the terminations 12 were by India, directly as a result of reviews carried out by them on measures against the EC following the WTO dispute launched against them in 2003.

In terms of statistics, the measures in force at the end of 2005 against the EC break down as: US (27%), India (15%), Brazil (6%), China (6%) and South Africa (5%), Argentina, Australia, Canada and Ukraine (4% each), others (25%).

The number of **new cases initiated against the Community** in 2005 compared to 2004, went down from 33 to 20. This decline in the number of measures and investigations against the Community reflects the global trend, with the WTO reporting that 2005 was the fourth consecutive year where new initiations declined and the second year where new measures declined.

It is however important to note that the number of new AD and CVD investigations directed against the Community, or its Member States, only marginally decreased. Indeed, the overall decrease of new investigations against the Community in 2005 as compared to the previous year (-13) is mainly explained by a reduction of new safeguard investigations. In particular this relates to Belarus and Turkey, which initiated a significant number of safeguard investigations in 2004 (respectively 4 and 5), but none in 2005.

In this respect, it should be recalled that even if it is likely that in most of the cases the Community exports are not directly targeted by those investigations, the EU exporters are nevertheless concerned, because safeguard measures are *erga-omnes*, i.e. they apply to all imports irrespective of their origin.

In spite of a decreasing number of new safeguard investigations, those still account for over half of the new cases opened. Indeed, of the 20 new trade defence cases initiated affecting the EC in 2005, 11 were safeguard cases.

This is a continuation of a worrying trend highlighted in last year's annual report, in particular because, as mentioned above, Community exporters are also exposed to safeguard measures even if they clearly are not at the origin of the problem. It appears that safeguard action is viewed by many countries as an easier option than the more technical AD and CVD investigations.

However, in the EC the use of safeguards is seen as an instrument of last resort largely because of its *erga omnes* nature and the fact that it addresses imports which are fair unlike dumping or subsidisation products which are deemed unfair practices. As a result any requests for safeguard action in the EC are carefully examined to ensure that the very high standards required, particularly regarding injury, are evident. Unfortunately many third countries appear to use the safeguard instrument in instances which, in the EC, would not warrant even the opening of an investigation. The Community continues to address this issue both in the WTO

context and also on a bilateral basis with third countries in an effort to curb any escalating use of this instrument.

While this relative reduction in trade defence activity against the Community is welcome, it is impossible to say whether it is a lasting trend. Likewise, it is very difficult to clearly identify which specific factors may explain this reduction though the strengthening of the euro may have been a significant cause. One additional factor is that DG Trade has been monitoring third country actions now for over six years and have continually intervened with other users to persuade them to improve their overall practice as well as in specific cases. This has been done, not only through direct representations to the investigating authorities themselves, but also by using the institutional framework created under various bilateral agreements which the EC has completed with third countries. By exploiting these forums, the EC can raise the profile of cases and exert further pressure on third countries to apply the instruments properly. These efforts have certainly had an impact on third countries use of trade defence instruments against the EC both in quantitative, as well as qualitative terms.

In last years report it was mentioned that an increasing number of third countries almost exclusively initiate AD cases against the EC as a whole and not against individual Member States. This does not necessarily hold true for 2005. Of the 9 anti-dumping cases initiated, 5 were done so against specific Member States. Of the remaining 4, it is noted that, China initiated all 3 cases against the EC as a whole while Pakistan initiated 1 such investigation.

Clearly, from an economic and commercial viewpoint, initiating AD cases against the EC as a whole or individual Member States may entail significant consequences for the EC exporters of the goods subject to investigation. What is not clear is if one approach is more beneficial than the other e.g. lower dumping margins arising from a normal value based on prices of all sales within the EC versus sales in one Member State only or visa versa. From a legal perspective, opening a case against the EC as a whole, given its status as a Customs Union and a WTO member in its own right, is not in itself contrary to GATT and WTO rules. The key issue, which is followed closely by the services, is that third countries apply the rules correctly and act consistently when conducting investigations e.g. not initiating cases against the EC as a whole where the prima facie evidence of injurious dumping only relates to certain Member States or not selecting sales in one Member State only to establish normal value in an investigation concerning the EC as a whole.

1.2. Sectors

Chemicals are the products most targeted by trade defence action against the Community. In 2005, 11 of the 20 new cases initiated and almost half of the measures imposed against the Community in 2005 relate to this sector. However, given that this sector ranks second in the order of importance of EC exports worldwide it is not surprising it also ranks so highly in the list of targeted sectors. On a global scale it is interesting to note that this sector also ranks highly for AD cases initiated over the last ten years accounting for almost 20% of all initiations, second only to the steel sector. No other sector features so prominently among trade defence actions taken in 2005.

2. GENERAL ISSUES WITH THIRD COUNTRIES

Last years report identified a number of shortcomings in third country trade defence actions including poor initiation standards, inadequate disclosure, lack of transparency and a general

overuse or indeed misuse of the instruments, particularly safeguards. While 2005 has shown improvements by some countries, particularly regarding disclosure, there is unfortunately a long way to go before all countries apply standards fully in line with the rule and spirit of the various WTO Agreements in the area of trade defence. The major systemic problems are as follows:

2.1. Poor initiation standards

Poor standards of initiation remain a problem among many users of trade defence instruments resulting in some investigations being initiated needlessly with the consequent negative effect on trade flows, even where measures may not be subsequently imposed. While clearly the standards for the initiation of an investigation are not those required for the imposition of measures, *prima facie* cannot be interpreted to mean the minimum possible. However many countries continue to initiate investigations on the basis of complaints or requests which, here in the EC, would be dismissed as insufficient due to lack of evidence. The Commission services continue to make representations on individual cases to third country authorities highlighting specific shortcomings following initiations. In addition there have been a number of seminars hosted by the Trade Defence services where the EU's practice and views regarding initiation standards have been explained.

2.2. Rights of defence of interested parties, disclosure, and transparency

Full and detailed disclosures, along with access to meaningful non-confidential data are key to ensuring the rights of interested parties in trade defence proceedings. However, all too often European exporters are faced with a lack of information making it extremely difficult to mount an effective defence in these proceedings. The problems are two-fold; a lack of substantive information generally justified on the basis that the data concerned should remain confidential and secondly the manner in which information is presented rendering a meaningful analysis impossible. These shortcomings become evident at the various main steps of proceedings; initiation, imposition of provisional measures and finally definitive measures.

A number of European exporters co-operating in anti-dumping investigations by third countries have highlighted the fact that many rebuttal arguments made by them following disclosure are ignored by the investigating authorities. Such an approach is tantamount to denying interested parties certain rights and weakens the justification for the imposition of subsequent measures. This arises particularly in relation to 'other factors' which must be addressed by the authorities in establishing the causal link in investigations. Many third countries either ignore submissions in this regard totally or simply list issues raised by interested parties without addressing them properly

Countries such as China, India and Pakistan continue to bend the rules on these issues while the Commission services continually urge them to improve their practice either through direct case related interventions or through seminars explaining the EU's own practice and views on these matters.

2.3. Poor injury/causality analysis

One of the most common and obvious shortcomings in third country trade defence cases is the poor injury and causation analysis. Examination of cases continually shows the poor standards applied in this respect. All too often the injury indicators will show positive trends, yet the

existence of injury will be confirmed on the basis of poor performance during one year while paying little regard to overall trends. This 'cherry picking' approach is common among certain third countries and is clearly in breach of WTO legislation. The problem is further exacerbated by poor investigation into causality with little regard being paid to 'other factors'; In many cases our analysis would indicate that there are other obvious causes of injury, but these are often ignored resulting in the unjustified imposition of measures.

3. RESULTS

The drop in initiations and in the number of measures in force at the end of 2005 against the EC or Member States is a welcome change in the trend of previous years. While this development cannot be attributed solely to the EC's activity in monitoring third country cases, nevertheless it is considered to have contributed.

The most obvious success in 2005 was the termination by India of 12 measures against the Community as a result of reviews which had been undertaken following the WTO dispute brought by the EC against India in 2003. Furthermore regarding India, there have been some efforts on their part to improve certain aspects of proceedings. Unfortunately there remains a lot to be done before they apply the instrument at a level consistent with WTO requirements.

A number of other cases which are worthy of mention are:

- Russia: termination of three safeguards cases concerning chemicals where other factors were the clear cause of injury. Indications of a positive outcome for the ongoing anti-dumping case on stainless steel.
- Argentina: termination of countervailing measures on Olive Oil.
- Pakistan: termination of investigation on tin plate from Germany, France, Italy and UK.
- Morocco: negotiation of quota for EC exporters of ceramic tiles at traditional export levels.
- Ukraine: decrease of AD duty on screw compressors from 75% to 29% by referring to a wrong application of the Ukrainian law (this level of duty is however still considered excessive).
- Australia: termination of CVD measures on bulk brandy from France.

4. MAIN ACTIVITIES OF THIRD COUNTRIES

4.1. United States

In 2005 the US did not initiate any new investigations against the EC. There were a number of sunset reviews of existing CVD measures initiated late in 2005 on which the Commission continues to be active. As a result of these reviews or ongoing US court actions the US has or may have to remove many CVD measures in 2006, including some of the contentious measures on low-enriched uranium and a number of CVD measures on steel products dating

from the early 1990's. At the end of 2005 the number of measures in place by the US remained unchanged from the previous year at 39.

In monitoring US cases in 2005 the focus related to ongoing WTO dispute settlement proceedings, in particular the cases on "zeroing" and "privatisation". In the "zeroing case", the panel and the Appellate Body reports were issued in September 2005 and April 2006 respectively and adopted at the Dispute Settlement meeting of 9 May 2006. The EC successfully obtained a condemnation of a method by which the US investigating authorities disregard non-dumped export transactions in their calculations (a method known as "zeroing") with the result of significantly inflating margins of dumping. The US now has until April 2007 to implement the ruling. Without this practice, it is unlikely that the US authorities would have been able to find dumping and impose duties in such a significant number of cases. The "zeroing" practice affects several hundred million USD in trade volume for EC exporters.

Regarding the privatisation case, following a request from the EC, in September 2004, an implementation panel was established as the US had not implemented some aspects of a WTO panel ruling in 2002. The panel report was issued in August 2005 and while the EC was not successful in all its claims it won most points regarding privatisations of companies in cases concerning steel from the UK and Spain. The US began its implementation of the findings in November 2005 and this was completed in May 2006. The US decided to maintain the measures in force which was a disappointing result but the Commission is awaiting the outcome of further sunset reviews before deciding whether any further steps are appropriate.

In a third WTO case concerning the US, the EC had requested WTO consultations concerning an AD duty imposed on a UK company, Firth Rixson in *Steel Bar from the UK*. DOC had penalised this company with an "adverse facts available" AD duty because the firm was unable to produce detailed production cost data for a small factory which it had acquired in a merger and dismantled before the investigation started. Two rounds of WTO consultations, as well as several bilateral interventions with the US, were held in 2005 but to no avail. Any further WTO action is on hold pending the outcome of an administrative review which the company requested in March 2006.

4.2. Russia, Ukraine and other non-WTO members

The year 2005 saw a slight increase in cases opened by Russia over 2004 from 3 to 4, while Ukraine initiated only 1 case compared to 3 in 2004. The number of measures in force by those two countries at the end of 2005 was 8, as compared to 5 in 2004.

2005 was a very busy year concerning these countries, not only for these new cases but for a number of cases opened the previous year which became very active in 2005, in particular the anti-dumping case on stainless steel by Russia which, it is expected, will result in no measures being imposed. Also for Russia it was shown that, in certain instances their approach is reasonable demonstrated by their termination of three safeguard cases which had been opened on chemical products. Of course, had they applied higher standards in examining the complaints it is likely that the particular cases in question would ever have come to initiation stage. Unfortunately in 2005 Russia has also shown that it can adopt an unreasonable and unwarranted approach by imposing safeguard measures on electric lamps case which are considered excessive. This excessive and disproportionate approach was also in evidence when Ukraine imposed anti-dumping measures on screw compressors.

Non-WTO members, such as Russia and Ukraine, pose a particular problem for monitoring their trade defence actions against the Community i.e. their legislation and standards do not necessarily correspond to WTO rules and the ultimate resort to WTO dispute settlement is not available. Nevertheless in monitoring their cases, despite the fact that they are outside the WTO system, the relevant WTO standards are still used as a benchmark. The fact that they are negotiating WTO membership provides certain leverage in urging them to improve their overall standards.

We also saw the arrival of a new user, Croatia who initiated one safeguard case.

4.3. China

In 2005 China's global trade defence actions increased very significantly over the previous year. In fact in the second half of 2005 China became the top initiator of anti-dumping cases among WTO members.

Fortunately this trend is not reflected in China's trade defence actions against the Community with the number of new cases opened in 2005 remaining stable at 3. However, the result of this increasing TDI activity is reflected in the current number of measures in force against the EC, which increased from 7 at end of 2004 to 9 at the end of 2005. In addition, China's global activities also had a negative impact on EC companies with manufacturing sites located in other Asian countries and exporting to China.

Since China is still considered a new user of trade defence instruments, and given their increasing use of the instruments, all new Chinese investigations are closely monitored in order anticipate and avoid serious and large scale problems. In 2005 China reached a conclusion on its first ever interim review conducted following a request from domestic industry. Unfortunately for EU exporters of catechol this resulted in an increase in the margins.

Last year's report drew attention to the fact that China's trade defence actions focussed on the chemical sector and this continued in 2005. All definitive measures in place at the end of 2005 as well as 2 of the 3 initiations by China against the EC related to this sector. This may be explained by the fact that, while the chemical sector is one of China's fastest growing industries, there are significant imports in the sector.

4.4. India & Pakistan

In the second half of 2005, on a global level, India was overtaken by China as the leading initiator of new anti-dumping cases. Nevertheless India still remains one of the largest users of TDI world wide.

This year has seen another slight decline in the number of cases opened by India against the Community from 3 the previous year to 2 in 2005 (and 7 in 2003). The number of measures in place against the EC significantly decreased from 36 in 2004 to 22 at the end of 2005. This is the outcome of the successful WTO dispute brought by the EC against India at the end of 2003, and which resulted in the termination of the vast majority of the main problem cases during 2005. It is hoped that the favourable outcome of this dispute settlement continues to have an impact on India's general anti-dumping practice. In this context improvements in their overall practice have been apparent although there is still a long way to go.

Pakistan initiated 3 AD cases against, inter alia, the EC in 2005, which is a change from their traditionally rather modest use of the trade defence instruments up to now. These concerned formic acid, tinplate and footwear. The EC had only been affected once by measures adopted in Pakistan. This increase in activity could be as a result of an increasing awareness among their domestic industry of the purpose of trade defence, as the Pakistani authorities have held a number of seminars for industry to explain the instruments. We have serious concerns regarding the very poor standards applied by Pakistan in their administration of the instruments: in the formic acid case the authorities presented serious barriers for exporters to have disclosure. We are therefore actively pursuing the issues with them and closely monitoring their ongoing investigations. We are however satisfied that they terminated two of the investigations opened in 2005 without imposing measures (tinplate, footwear).

4.5. Latin America

The previous years low activity trends of Latin American countries has been confirmed in 2005. Only one new investigation was initiated by Brazil (AD case subsequently terminated in 2006 without imposition of measures), while Argentina neither initiated new cases nor imposed any definitive measures against the EC in 2005. Despite the fact that Argentina continued to be an active user of anti-dumping at a global level in 2005, this is the second year in succession where it was inactive vis-à-vis imports from the EC. While exports from the EC to Argentina have continued to recover in recent years, they have not yet reached the traditional levels existing prior to 2002 when their currency was devaluated. Nevertheless in 2005 we continued bringing pressure on Argentina through the WTO dispute settlement mechanism regarding their CVD measures on wheat gluten and olive oil.

Regarding Mexico an Argentina our work was characterised by consultations in the context of WTO dispute settlement proceedings. These consultations related to CVD measures on agricultural products namely olive oil (Mexico and Argentina) and wheat gluten (Argentina). Unfortunately none of these consultations brought the parties close to finding a solution and since then there have been preparations ongoing for two WTO panels (Argentina terminated the measures on olive oil). Other activity regarding trade defence by Brazil and Mexico related in particular to actions on cases initiated or measures existing prior to 2005 (e.g. definitive determinations, expiry reviews and terminations).

4.6. Turkey

Even though no new investigations were initiated by Turkey in 2005, it should be recalled that this country initiated an unprecedented number of safeguard investigations in 2004 (5 in total). These investigations were concluded in 2005 with the Commission playing an active part in these proceedings during that year. Overall, for the EC the results were positive with three of the five cases being terminated without measures and for the other two, where measures were imposed, there was little impact on EC exporters owing to the nature and scope of the particular measures. Nevertheless we remain seriously concerned regarding Turkey's over zealous recourse to the safeguard instrument.

5. CONCLUSION

Given the overall reduction in both new initiations and number of measures in place against the EC 2005 was, in terms of trade defence measures, an improvement for European exporters. It is recalled that the decrease in number of measures in place is for an important

part related to termination of measures as a result of reviews carried out following the WTO dispute launched against India. As to the number of new investigations, the decrease is mainly related to less initiation of *erga omnes* safeguard investigations, to which EC exporters are exposed without always being directly targeted. It is hoped that this trend will continue. In the meantime the EC continues to monitor third country actions in order to ensure that third countries respect WTO and bilateral rules, assist and defend interests of EU industries/MSs targeted and aim to reduce the economic impact of third country measures on exporters.

The problems have been addressed in several ways, either through direct intervention on specific cases, raising general systemic problems in the framework of both formal and informal bilateral contacts with the countries concerned, discussions in the relevant Committees in the WTO context as well as the continuation of training for third countries regarding our own views and practice in TDI matters. In 2005 officials from the Trade defense services were involved in ten such seminars addressing such countries as China, Russia and Mexico.

Discussions on anti-dumping and countervailing continued in 2005 in the context of the WTO Doha round with the aim of improving the rules particularly regarding transparency, predictability and clarity. The Hong Kong Declaration called on Members to avoid the unwarranted use of AD measures and perhaps these ongoing discussions will create awareness among users ultimately resulting in their prudent use.

Finally, ensuring that third countries apply the same high standards in the application of their trade defense instruments as the EC is an important factor in ensuring that any improved market access which is obtained in these countries is not eroded. Taking an active role in addressing barriers to trade, including the correct and transparent application of the trade defense instruments, will contribute to improved competitiveness of European industry worldwide.